

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID GIBSON,

Plaintiff,

v.

9:22-CV-0270
(GTS/ATB)

ST. ELIZABETH MEDICAL CENTER
HOSPITAL EXECUTIVE DIRECTOR, et al.,

Defendants.

APPEARANCES:

DAVID GIBSON
15-A-2714
Plaintiff, pro se
Marcy Correctional Facility
P.O. Box 3600
Marcy, NY 13403

GLENN T. SUDDABY
United States District Judge

DECISION and ORDER

I. INTRODUCTION

Plaintiff David Gibson commenced this action by filing a pro se civil rights complaint pursuant to 42 U.S.C. § 1983 ("Section 1983"). Dkt. No. 1 ("Compl").¹ By Decision and Order entered on May 19, 2022, the Court reviewed the sufficiency of the complaint pursuant to 28 U.S.C. § 1915A ("Section 1915A"), transferred the claims asserted against defendants Mount Vernon Montefiore Hospital Executive Director, Samuels, Zamilus, and Wolfriedman

¹ Plaintiff paid the full filing fee required for commencing an action in this District.

to the Southern District of New York, and conditionally dismissed the remaining Section 1983 claims for failure to state a claim upon which relief may be granted. Dkt. No. 3 ("May Order"). Thereafter, plaintiff filed an amended complaint. Dkt. No. 4 ("Am. Compl.").

By Decision and Order entered on August 18, 2022, the Court accepted the amended complaint for filing, but dismissed it with prejudice pursuant to 28 U.S.C. § 1915A(b)(1). Dkt. No. 7 ("August Order"). That same day, judgment was entered dismissing this action. Dkt. No. 8 ("Judgment").

Plaintiff has appealed to the Second Circuit Court of Appeals from the dismissal of his action. Dkt. No. 9. Presently before the Court is plaintiff's request to proceed in forma pauperis on appeal. Dkt. No. 13-1.

II. DISCUSSION

Rule 24(a)(1) of the Federal Rules of Appellate Procedure provides as follows:

A party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

- (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;
- (B) claims an entitlement to redress; and
- (c) states the issues that the party intends to present on appeal.

Fed. R. App. P. 24(a)(1).

Plaintiff has supported his request to proceed in forma pauperis on appeal with a completed affidavit in accordance with Rule 24(a)(1) of the Federal Rules of Appellate Procedure. See Dkt. No. 13-1 at 4-9. According to the affidavit, plaintiff is not employed at his current place of confinement, has limited outside sources of income through family

members, and has had an average balance of \$163.27 in his inmate account during the past twelve months. *Id.*

As set forth in 28 U.S.C. § 1915, a district court may authorize a litigant to commence a civil action or an appeal therein without prepayment of the filing fee upon a demonstration of economic need. 28 U.S.C. § 1915(a)(1); see *also* Fed. R. App. P. 24(a). The statute further provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(3).

In this case, the Court has not certified that an appeal of the August Order would not be taken in good faith. Furthermore, plaintiff's affidavit demonstrates economic need. Accordingly, and upon review of the record in light of the foregoing, plaintiff's application for leave to proceed in forma pauperis on appeal is granted.

III. CONCLUSION

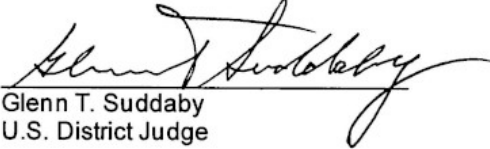
WHEREFORE, it is hereby

ORDERED that plaintiff's request for leave to proceed in forma pauperis on appeal (Dkt. No. 13-1) is **GRANTED**; and it is further

ORDERED that the Clerk shall serve a copy of this Order on the plaintiff.

IT IS SO ORDERED.

Dated: December 27, 2022
Syracuse, New York


Glenn T. Suddaby
U.S. District Judge